

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RANDY HOLLOWAY,

Defendant-Appellant.

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UNPUBLISHED

October 16, 2003

No. 241345

Macomb Circuit Court

LC No. 01-002692-FC

Before: Fitzgerald, P.J., and Zahra and Hood, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of carjacking, MCL 750.529a, and was sentenced to a prison term of 210 to 720 months in prison. Defendant appeals as of right, arguing that the evidence presented was insufficient to support the conviction. We affirm.

In reviewing the sufficiency of the evidence, this Court must view the evidence de novo in the light most favorable to the prosecutor and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999); *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002).

Michigan's carjacking statute provides:

(1) A person who by force or violence, or by threat of force or violence, or by putting in fear robs, steals, or takes a motor vehicle as defined in section 412 from another person, in the presence of that person or the presence of a passenger or in the presence of any other person in lawful possession of the motor vehicle, is guilty of carjacking, a felony punishable by imprisonment for life or for any term of years. [MCL 750.529a]

The statute requires a showing that a person, (1) by force or threat of force, (2) took a motor vehicle (3) in the presence of the lawful possessor of it. *People v Davenport*, 230 Mich App 577, 579; 583 NW2d 919 (1998). A motor vehicle includes a motorcycle. MCL 750.412.

Defendant contends that the use of force was not prior to or simultaneous to the taking of the motorcycle because he completed the taking of the motorcycle outside the presence of the owner of the motorcycle. For purposes of the crime of carjacking, a defendant “takes” a motor

vehicle “from” another when he acquires possession of the motor vehicle. *People v Green*, 228 Mich App 684, 695-696; 580 NW2d 444 (1998). “Possession” is defined as having “dominion and control” over the motor vehicle. *Id.*

Here, defendant’s initial attempt to take the motorcycle failed when he lost control of the motorcycle and became pinned between the motorcycle and the side of a building where the owner of the motorcycle was employed. The owner of the motorcycle exited the building and observed the situation. He then stood the motorcycle up on its kickstand, and asked defendant what had happened. Defendant then pulled a gun and pointed it at the owner before driving away on the motorcycle.

It is clear that defendant committed the offense of carjacking when, in order to take the motorcycle, defendant pointed a gun at the owner of the motorcycle. Although the owner of the motorcycle was not present when defendant first attempted to take the motorcycle, this attempt failed and defendant was not able to complete the task of taking the motorcycle. Defendant ultimately took the motorcycle from the owner’s presence by the threat of force. The evidence was sufficient to support defendant’s conviction for the offense of carjacking.

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Brian K. Zahra

/s/ Karen M. Fort Hood